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12 TRANSCRIPT OF MOTION HEARING PROCEEDINGS
BEFORE THE HONORABLE CHIEF JUDGE WILLIAM E. SMITH

13 WEDNESDAY, NOVEMBER 16, 2016; 2:04 P.M.
PROVIDENCE, RHODE ISLAND

15 APPEARANCES OF COUNSEL:

16 FOR THE INTERVENOR:

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1 November 16, 2016

2:04 P.M.

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3 P R O C E E D I N G S

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5 THE COURT: All right. Good afternoon. This
6 is the matter of Bradley Smith versus Deborah Garcia.
7 We're here on a motion to intervene, motion to vacate
8 judgment, a motion to dismiss, and award attorney's
9 fees.

10 So, Counsel, let's have you identify
11 yourselves for the record.

12 MR. BLACKMAN: Your Honor, Charles Blackman.
13 With me is pro hac vice counsel, Paul Levy, on behalf
14 of the Myvesta Foundation. With the Court's
15 permission, Mr. Levy would like to argue for us.

16 THE COURT: Okay. That's fine.

17 MR. LEVY: And I am Mr. Levy.

18 THE COURT: I assumed that to be the case.
19 Come on up. Go ahead.

20 MR. LEVY: May it please the Court, I am Paul
21 Alan Levy, appearing for the proposed intervenor,
22 Myvesta Foundation. We are here asking the Court to
23 grant Myvesta Foundation's motion for leave to
24 intervene as a defendant so that it can then move to
25 set aside a consent order that prejudices interests,

1 and also seek dismissal of the case.

2 Simply put, as we see it, this is a
3 fraudulent lawsuit purportedly filed pro se seeking
4 relief that was purportedly consented to pro se, but
5 where the real objective was to serve the interests of
6 some unidentified third person -- we don't yet know who
7 that was, although we can guess -- and by obtaining
8 relief that's prejudicial to another third party, and
9 that's my client, Myvesta.

10 It's a tactical maneuver that was used by
11 somebody who was sophisticated to a certain extent, but
12 unscrupulous to an extent. It was presumably an outfit
13 that specializes in what's called search engine
14 optimization, or in the trade known as *Black-Hat Search*
15 *Engine Optimization*, taking advantage of the knowledge
16 that Google and other search engines, when they're
17 confronted with an order from a judge that declares the
18 matter to be defamatory, will do the good-citizen thing
19 by exercising its discretion to take the page that's
20 determined to be defamatory out of the search index.

21 The complaint in this case is directed at
22 harming Myvesta's interests. If we are right that
23 Deborah Garcia is a fictional defendant, Myvesta is the
24 only real defendant in this case. It's a consent order
25 that prejudices Myvesta's interests, as a practical

1 matter.

2 We think the motion for leave to intervene
3 was filed timely, and that's why we think it should be
4 granted.

5 THE COURT: Explain to me again what
6 Myvesta's interest is here.

7 MR. LEVY: Myvesta owns the blog on which the
8 pages that the Court's consent order called for Google
9 to take out of the search index, its search index,
10 which Google honored.

11 THE COURT: All right. Allegedly, it was the
12 defendant or the alleged defendant who you think is a
13 fictional person, Deborah Garcia --

14 MR. LEVY: Right.

15 THE COURT: -- who allegedly wrote the blog
16 entry that was claimed to be defamatory.

17 MR. LEVY: The complaint alleges that Deborah
18 Garcia is the author of two comments on blog articles
19 on the Myvesta website. Although, the -- one of the
20 curiosities of the case is that the comments were
21 actually posted to different articles than the one that
22 were sought to be delisted in the consent order.

23 THE COURT: Okay.

24 MR. LEVY: So sophisticated, but perhaps a
25 little sloppy as well.

1 THE COURT: Right. So now that I've learned
2 more about this situation and read the reason -- one of
3 the reasons this was scheduled was that I had read the
4 blog entry from the -- was it Public Citizen, and this
5 appears to be part of a pattern of cases that's filed.

6 MR. LEVY: It appears. Professor Volokh has
7 actually read more of the actual cases than I have. I
8 have access to the Dropbox that contains many of them.
9 But there appear to be a few dozen cases around the
10 country like this, a half or two dozen of which seemed
11 to be -- and I want to make clear this is only seemed
12 to be -- linked to a single operative.

13 THE COURT: Okay. So I had -- I tried to
14 reach out, but it didn't work out, but I tried to reach
15 out to the U.S. Attorney's office to attend here today
16 because it seemed to me that now that I've read all
17 these papers, that crimes may have been committed here.
18 And I'm wondering if you have been in touch with any
19 folks in law enforcement in any of the jurisdictions
20 where these cases have been brought to initiate
21 criminal investigations.

22 MR. LEVY: To some extent, Your Honor. And I
23 agree with you. I mean, we have resources and we want
24 to be able to pursue discovery to figure out who ought
25 to pay the attorney's fees under the anti-SLAPP

1 statute, but it's my suspicion that the resources
2 needed to deal with this problem are much more in the
3 hands of the authorities.

4 Because I'm on the public record, I'm not
5 sure I want to give the other side information about
6 what -- which jurisdictions, but I do --

7 THE COURT: That's fine. You don't have to
8 do that.

9 MR. LEVY: I do know that Professor Volokh,
10 and I'm party to some communications relating to these
11 communications, is in touch with authorities in at
12 least two jurisdictions where such cases have been
13 filed. And I would certainly encourage Your Honor --
14 to the extent that Your Honor believes that the
15 involvement of the U.S. Attorney for this district
16 would be appropriate, I would certainly encourage that
17 because in the end, I suspect that dealing with this
18 problem is going to be beyond our needs -- beyond our
19 means.

20 You know, on the one hand, we would like to
21 be -- sort of get our fees back under the SLAPP
22 statute, but the most important thing is to put a stop
23 to this so that it doesn't keep happening. It seems to
24 me that what Your Honor says in this case and any
25 subsequent investigations that come out and actions

1 that might be taken pursuant to those investigations,
2 might well be the best medicine for the problems that
3 have been brought to light here.

4 THE COURT: Are there any other cases in
5 which you've reached this point?

6 MR. LEVY: This is the only case. I mean,
7 I've been looking very hard for local counsel in
8 Baltimore where some cases involving the interests of
9 my client have been filed in state court. And I
10 believe I have somebody, but I haven't gotten the final
11 okay because it's a public interest group and they need
12 to have their litigation committee pass on it, and they
13 don't -- haven't yet sort of completed that process. I
14 do hope to file something -- that is actually a case
15 that was filed by a young lawyer who I think probably
16 got in over his head.

17 THE COURT: Um-hum.

18 MR. LEVY: But there may be some
19 accountability there.

20 This morning, we were able to -- we asked in
21 the clerk's office, and apparently the papers were
22 brought to the court by a service entity. And the
23 filing fee, unlike some other cases where the filing
24 fee was paid with cash, the filing fee here was paid by
25 check. So there may well be some traceability there.

1 We would like the Court's permission to --
2 because we filed the motion under the anti-SLAPP
3 statute, there is an automatic stay of discovery. The
4 SLAPP statute provides for specified discovery allowed
5 on motion and for just cause, and we would like
6 permission to take discovery to try to identify whoever
7 it is who's behind this, number one, and whoever
8 they're filing on behalf of, because the argument -- I
9 mean, I can't say I've completed my research, but I
10 think an argument can be made that the principal might
11 be responsible for the actions taken by the agent.

12 THE COURT: Now, if I understand some of the
13 attachments that you included with your affidavit, it
14 appears that you've been in touch with the attorney for
15 Mr. Brad Smith.

16 MR. LEVY: Yes.

17 THE COURT: Now, Brad -- is Bradley Smith,
18 who is purported to be the pro se plaintiff in this
19 case, who now says he's not, but are you sure you got
20 the right Brad Smith?

21 MR. LEVY: Well, the address on the complaint
22 or at least the address on the consent papers --

23 THE COURT: Yes.

24 MR. LEVY: -- is the old address for the
25 Rescue One Financial Company which was the topic of the

1 blog article by Myvesta Foundation, and more
2 specifically by Mr. Ruddie, which discusses the Rescue
3 One Company. So I think we probably do have the right
4 Brad Smith for that reason.

5 I actually had a former Public Citizen
6 person, who is now a law student at UC Irvine, go by
7 that address, and it's not there anymore. That company
8 is no longer there; they've moved to a different
9 location. But I think we have the right Bradley Smith.
10 And, you know, from his perspective, I can imagine why
11 he wouldn't want to be subject to personal jurisdiction
12 in Rhode Island by appearing here, not to speak of
13 spending money to send somebody here. I think his
14 company may have a problem, but he individually has
15 probably made a wise choice by not appearing.

16 THE COURT: Now, but he contends that the
17 signature on the papers are forgeries; is that correct?

18 MR. LEVY: He said he didn't sign them. I
19 think that's the same thing, but, yes. His lawyer
20 represented to me that his client, Bradley Smith -- and
21 the lawyer is somebody -- I mean, I don't know this
22 lawyer, but he's a lawyer with a substantial firm. I
23 have no reason to doubt the veracity of what he's
24 telling me on behalf of his client. He says that his
25 client says he did not sign the papers and did not

1 authorize the filing of the papers in his name.

2 THE COURT: All right.

3 MR. LEVY: And I think you'll actually see
4 that reflected in the email that explains why --

5 THE COURT: I did. I read the email.

6 All right. So your plan, if I grant the
7 motion for you to intervene as a defendant, you then
8 become a defendant, but you've also filed a motion
9 for -- to vacate the judgment, as well as the motion to
10 dismiss and award attorney's fees; right?

11 MR. LEVY: We have, although it's not -- I
12 filed that as an attachment to our motion to intervene.

13 THE COURT: Okay.

14 MR. LEVY: I think the better course would be
15 to set a schedule for an opposition to that, in case
16 somebody wants to do -- I intend -- if the motion for
17 leave to intervene is granted, and I would ask the
18 Court to order the motions filed nunc pro tunc,
19 perhaps, I would intend to serve the papers on
20 Mr. Ruddie, who is the person who signed the contract
21 with Rescue One Financial, just in case he wants to
22 appear now. I can't imagine that he will, but he ought
23 to have the chance.

24 And meanwhile, I would like the opportunity
25 to take discovery to figure out if in fact it was this

1 person's company or, if not, who else.

2 THE COURT: All right. Very good. So how
3 much time do you want for the discovery that you would
4 like to take?

5 MR. LEVY: I'm going to be out of the country
6 with my family from December 21 to January 12. I would
7 like initially until March 1.

8 THE COURT: Okay. All right. Then what I
9 will do is I'll grant the motion to intervene on behalf
10 of Myvesta Foundation and set a schedule for discovery
11 until March -- did you say March 1st?

12 MR. LEVY: I think March 1.

13 THE COURT: That's fine.

14 MR. LEVY: I expect that there may be some
15 elusive characters on the other end of this case. I
16 might end up asking for more, but I want to give myself
17 and other people a hard deadline.

18 THE COURT: That's fine. And then now that
19 you're a -- your client is a defendant in the case, you
20 can formally file the motion to vacate the judgment,
21 and we'll give the other parties an opportunity to
22 object to that.

23 If there is no objection to the motion to
24 vacate the judgment, then I'll grant the motion and
25 vacate the judgment. So we'll see what transpires with

1 that. And then you can docket at your leisure, I
2 guess, the motion to dismiss. But I don't think you
3 want to be filing a motion to dismiss while your
4 discovery is ongoing. So...

5 MR. LEVY: I'm not -- the practical problem
6 for our client is getting, excuse me, getting the order
7 vacated.

8 THE COURT: Um-hum.

9 MR. LEVY: I think you could actually grant a
10 motion to dismiss, and we would then be pursuing
11 discovery on the question of who owns attorney's fees.
12 So I would like to file the motion. If Your Honor
13 thinks it's better to keep it on hold, I can --

14 THE COURT: No. I'm certainly happy to have
15 you move it --

16 MR. LEVY: Right.

17 THE COURT: -- move it forward.

18 MR. LEVY: Right.

19 THE COURT: So I have no problem with you
20 filing both at the same time, and --

21 MR. LEVY: Okay.

22 THE COURT: -- give the parties an
23 opportunity, whoever they are, to file whatever they
24 want to file.

25 But I'm also going to -- I am going to have a

1 transcript of this proceeding prepared, and I'm going
2 to order the Clerk to send a copy of the file, all of
3 your filings, as well as the transcript of this
4 proceeding this afternoon to the United States
5 Attorney's office for them to review because it does
6 appear to me, as I said earlier, just at first blush,
7 that there's potentially multiple crimes that have been
8 committed, both fraud and potentially forgery. And
9 various kinds of fraud, I think, are in play here, and
10 so I think it is something that law enforcement should
11 become aware of and investigate.

12 I'm embarrassed that this order, this consent
13 order, was signed, but it shows you just how, you know,
14 in a busy court, how something like this can happen.
15 But I'm, frankly, if everything that's in here is true,
16 which it appears to be, I'm pretty outraged about it.

17 MR. LEVY: If I may, Your Honor, it's our
18 observation that these cases tend to be filed in
19 big-city courts where, I mean, as a lawyer, I've been
20 litigating for nearly 40 years now and I know the
21 pressures that federal district court judges are under.
22 And I'm not much in state court in big cities, but, I
23 mean, I know they're under a heavy sort of paper
24 caseload pressures as well, and somebody's taking
25 advantage of that.

1 THE COURT: Yeah. Well, I'm sure in time it
2 will get sorted out.

3 MR. LEVY: Thank you, Your Honor.

4 THE COURT: All right. Thank you very much.
5 We'll be in recess.

THE COURTROOM DEPUTY: All rise.

8 | * * * *

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Dated 19th day of November, 2016.